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Paper No. 14

MAO INC.
1636 POPPS FERRY ROAD
SUITE 224
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JAN 31 2011

OFFICE OF PETITIONS

In re Patent No. RE37588
Issued: 03/19/2002
Application No. 09/506458
Filed: 02/17/2000
Reissue of Patent No. 5718431
Issued: 02/17/1998
Application No. 08/804299
Filed: 02/21/1997
For: GAMING SYSTEM AND METHOD
FOR MULTIPLE PLAY WAGERING

DECISION ON PETITION

This is a decision is in response to the petition under 37 CFR 1.378(b),¹ filed on November 12, 2010, to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is dismissed.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$400.00 as set forth in 37 CFR 1.17(f).

¹ A grantable petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) must include

- (1) the required maintenance fee set forth in § 1.20(e) through (g);
- (2) the surcharge set forth in § 1.20(I)(1); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

The petition for reconsideration should include an exhaustive attempt to provide the lacking item(s) noted below, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

The original patent upon which the instant reissue patent is based issued on February 17, 1998.² The first and second maintenance fees were timely paid. The third maintenance fee could have been paid during the period from February 17, 2009, through August 17, 2009, or, with a surcharge, during the period from August 18, 2009, through March 19, 2010. The patent expired at midnight on March 19, 2010, for failure to timely pay the third maintenance fee.

Petitioner, Stacey J. Perry, president of assignee MAO Inc. (hereinafter "MAO"), asserts unavoidable delay in that MAO relied upon registered patent practitioner Lou Weinstein, et al., of the law firm of Volpe and Koenig (hereinafter "Volpe"), which was tracking the maintenance fees in the original patent upon which the subject reissue patent is based. Petitioner further avers that (i) the delay was unavoidable because no notice was received by MAO or Volpe from the USPTO informing petitioner that the third maintenance fee was due, and (ii) because practitioner Terry Morris, by whom the subject reissue application was prosecuted, did not inform petitioner that a PTO/SB/47 Fee Address form, changing MAO's address in USPTO records, should be filed.

In her affidavit, Ms. Perry states, in pertinent part:

3. In 1995, MAO, Inc., retained Attorney Lou Weinstein, who later became a member of the law firm Volpe and Koenig to register, protect, and maintain a fee docket for its intellectual property. In November of 2001, Volpe and Koenig sent their notice to MAO that the first maintenance fee was due before August 15, 2001. The correspondence is attached hereto as Exhibit A-1.

4. In October of 2004 MAO Inc engaged Attorney Terry B. Morris, Registration Number 32,345, to further the prosecution of MAO's patents pending but not to

² The periods for payment of maintenance fees in a reissue patent are counted from the date of grant of the original non-reissue application on which the reissued patent is based. See 37 CFR 1.362(h).

maintain a maintenance fee docket. At Attorney Morris' directive, a Change of Attorney Form for all company Patents pending was filed with the USPTO. About that time MAO Inc. moved its offices, so a change of correspondence address for all Patents and patents pending was also filed with the USPTO.

5. MAO Inc has not ever been directed by Volpe and Koenig to file USPTO Form SB47: USPTO Change of Fee Notification Address. Nor, has MAO Inc ever received a Severance Letter from Volpe and Koenig.

6. Volpe and Koenig does maintain a fees docketing system and has a paralegal specifically assigned to maintaining that system.

7. Volpe and Koenig did forward a notification of Fees Due for this Patent in 2005, resulting in payment of the 7.5 year maintenance fees for US Patent RE37,588...

8. Volpe and Koenig was listed on August 17, 2009 as Attorney of Record for US Patent RE37,588. Volpe and Koenig failed to notify MAO Inc of the 11.5 yr. Maintenance Fee due and therefore caused the unintentional and unavoidable failure to pay 11.5 year maintenance fees.

9. In consideration of MAO's 2011 budget, on October 15, 2010, I requested that Attorney Morris create a listing of all future annuity due dates and anticipated Patent Office Actions. That very day MAO learned that US Patents 5,788,574 and US Patent RE37,588 had both expired.

10. On October 19, I did contact the office of Volpe and Koenig. I spoke with both, Gayle Ruchstul (the Paralegal responsible for the client Fee Docketing System) and Sally Pietzman, the Office Manager. The paralegal immediately recognized me as a client and referred me to the Office Manager, to whom I required as to the cause of the fee payment failure. She took the patent numbers, their file numbers and denoted that either she or one of the Attorneys would get back to me. To date, there has been no response from Volpe and Koenig. The failure to respond to my inquiry is problematic, causing a week delay in filing Petitions to Revive Under 37 CFR 1.378.

The declaration of practitioner Terry B. Morris states, in pertinent part:

2. I have been retained by MAO, Inc., to represent it on various patent matters since 2004, dealing primarily with patent prosecution and potential litigation, but not for maintenance fee docket purposes.

3. During my handling of patent matters for MAO, Inc., I considered US Patent RE37,588 as inactive for the purposes of my representation since the Issuance and Publication fees were paid and maintenance fees tracking were assumed within the activity of the Assignee of Record was using the Attorney of Record to maintain the Fee Docket.

4. I was retained by Petitioner MAO, Inc., on October 15, 2010, to prepare a timeline for all future fees due for all of MAO's intellectual property (US and International).

5. On October 15, 2010, and during this review, I learned that US Patent RE37,588 was designated on the internet records of the United States Patent and Trademark Office as expired for failure to pay maintenance fees.

6. Subsequently on October 15th, I inform Ms. Stacy Perry of MAO, Inc. of the discovered status of expiration for US Patent RE37,588.

A petition to accept the delayed maintenance fee under 35 U.S.C. § 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1). This petition lacks requirement (1).

The Director may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Director to have been "unavoidable".³

A late maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 U.S.C. § 133 because 35 U.S.C. § 41(c)(1) uses identical language (i.e. "unavoidable delay").⁴ Decisions reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable.⁵ In this regard:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.⁶

As 35 U.S.C. § 41(c) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. § 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees.⁷ That is, an adequate showing that the

³ 35 U.S.C. § 41(c)(1).

⁴ Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting In re Patent No. 4,409,763, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1989)).

⁵ Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used by prudent and careful men in relation to their most important business").

⁶ In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

⁷ Ray, 55 F.3d at 609, 34 USPQ2d at 1788.

delay was "unavoidable" within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent.⁸

Petitioner's arguments may be summarized as being that the delay should be considered unavoidable because (i) Volpe was responsible for timely payment of the maintenance fee, but failed so to do, presumably because of a docketing error, (ii) that Morris failed to inform petitioner to file a PTO/SB/47 "Fee Address" Indication Form with the USPTO in the subject patent; and (iii) that no notice was received from the USPTO by Volpe or MAO that the maintenance fee was due.

With regard to argument (i), that petitioner relied upon Weinstein, and/or Volpe and Koenig, to track and pay the third maintenance fee, such reliance per se does not provide petitioner with a showing of unavoidable delay within the meaning of 37 CFR 1.378(b) and 35 U.S.C. § 41(c).⁹ Rather, such reliance merely shifts the focus of the inquiry from petition to whether the attorney or agent acted reasonably and prudently.¹⁰ As such, assuming that the agent had been so engaged, then it is incumbent upon petitioner to demonstrate, via a documented showing, that the attorney or agent had docketed this patent for the first maintenance fee payment in a reliable tracking system.¹¹ If petitioner cannot establish that agent had been so engaged, then petitioner will have to demonstrate what steps were established by petitioner to monitor and pay the maintenance fee. Therefore, any showing of unavoidable delay must include a statement from petitioner's patent attorney, as well as any other attorney(s) of record during the period that payment of the maintenance fee was delayed, as to why action was not taken to timely submit the required maintenance fee while the patent was under that agent's control. Petitioner should send a letter (accompanied by a copy of this decision) to Weinstein by registered or certified mail, return receipt requested, indicating to the agent that the USPTO is requesting his firm's (Volpe's) assistance in determining the circumstances surrounding the expiration of this patent, and is specifically requesting Volpe to provide a statement as to: (1) whether, and when, the firm first became aware that the third maintenance fee for this

⁸ Id.

⁹ See California Med. Prod. v. Technol. Med. Prod., 921 F. Supp. 1219, 1259 (D. Del. 1995).

¹⁰ Id.

¹¹ Id.

patent was due, and (2) why the maintenance fee was not timely submitted. Such statements should be accompanied by copies of any documents relevant to payment of the maintenance fee. In the event that Weinstein fails to provide a statement within a person (e.g. within one (1) month) specified in such letter, petitioner should submit a copy of such letter and the return receipt indicating its delivery to the patent attorney or agent with any petition for reconsideration under 37 CFR 1.378(e).

The above paragraph notwithstanding, petitioner is reminded that the failure of communication between an applicant and counsel is not unavoidable delay.¹² Specifically, delay resulting from a lack of proper communication between a patent holder and a registered representative as to who bore the responsibility for payment of a maintenance fee does not constitute unavoidable delay within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).¹³ Moreover, the Office is not the proper forum for resolving a dispute as to the effectiveness of communications between parties regarding the responsibility for paying a maintenance fee.¹⁴

With regards to the assertion of a docketing error, a delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

(1) the error was the cause of the delay at issue;

(2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance;

(3) and the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.¹⁵

An adequate showing requires:

¹² In re Kim, 12 USPQ2d 1595 (Comm'r Pat. 1988).

¹³ See Ray v. Lehman, 55 F.3d 606, 610, 34 USPQ2d 1786, 1789 (Fed. Cir. 1995).

¹⁴ Id.

¹⁵ See MPEP 711.03(c) (III) (C) (2).

(A) Statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them.

(B) Petitioner must supply a thorough explanation of the docketing and call-up system in use and must identify the type of records kept and the person responsible for the maintenance of the system. This showing must include copies of mail ledgers, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing, and include an indication as to why the system failed to provide adequate notice that a reply was due.

(C) Petitioner must supply information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

The present petition lacks the showing required by (1), (2), and (3) above.

At the outset, if the persons to whom Perry spoke at Volpe, Gayle Ruchstul (Ruchstul) and Sally Pietzman (Pietzman), were responsible for docketing and tracking the third maintenance fee, affidavits or declarations of facts must be provided by them, setting forth the facts as they know them. Further, petitioners must provide statements from all other persons at Volpe with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them. As stated in the preceding paragraphs, petitioners should contact Weinstein and requested a statement, setting forth the facts as he knows them concerning the expiration of the patent and Volpe's responsibility for tracking and payment of the third maintenance fee.

Additionally, petitioner must supply a thorough explanation of the docketing and call-up system in use and must identify the type of records kept and the person responsible for the maintenance of the system. This showing must include copies of mail ledgers, docket sheets, filewrappers and such other records as may exist which would substantiate an error in docketing, and include an indication as to why the system failed to provide adequate notice that a reply was due. Petitioner should provide a copy of the spreadsheet and any other documentation utilized in the tracking and payment of maintenance fees.

Lastly, petitioner must supply information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

The above paragraph notwithstanding, petitioner is reminded that the failure of communication between an applicant and counsel is not unavoidable delay.¹⁶ Specifically, delay resulting from a lack of proper communication between a patent holder and a registered representative as to who bore the responsibility for payment of a maintenance fee does not constitute unavoidable delay within the meaning of 35 U.S.C. § 41(c) and 37 CFR 1.378(b).¹⁷ Moreover, the Office is not the proper forum for resolving a dispute as to the effectiveness of communications between parties regarding the responsibility for paying a maintenance fee.¹⁸

In summary, the showing of record is inadequate to establish unavoidable delay. Petitioner has provided insufficient evidence to substantiate a claim of docketing error. As petitioner has not shown that it exercised the standard of care observed by a reasonable person in the conduct of his or her most important business, the petition will be dismissed.¹⁹

A delay resulting from a lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP does not constitute an "unavoidable" delay.²⁰ As the showing of record does not rise to the level of unavoidable delay, the petition will be dismissed.

Likewise, with regard to argument (iii), above, that the delay should be considered unavoidable because no notification was received from the USPTO, by MAO or Volpe concerning the requirement to pay the third maintenance fee, a patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute

¹⁶ In re Kim, 12 USPQ2d 1595 (Comm'r Pat. 1988).

¹⁷ See Ray v. Lehman, 55 F.3d 606, 610, 34 USPQ2d 1786, 1789 (Fed. Cir. 1995).

¹⁸ Id.

¹⁹ See note 4, supra.

²⁰ See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ 1130, 1132 (N.D. Ind. 1987), Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

unavoidable delay.²¹ Under the statute and regulations, the Office has no duty to notify patentees (or their registered patent practitioners) of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. The Office mailing of Maintenance Fee Reminders is carried out strictly as a courtesy. Accordingly, it is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and/or the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office.²²

Likewise, with regard to argument (ii) above, that the delay should be considered unavoidable because attorney Morris failed to advise to file Form PTO/SB/47, the "Fee Address" Indication form, it is noted that, as stated above, petitioner's argument is unpersuasive because the failure to receive a Maintenance Fee Reminder does not render the delay in payment of the maintenance fee unavoidable. In addition, only an address represented by a Customer Number can be established as the fee address for maintenance fee purposes. However, petitioners have not shown that they established a Customer Number with the USPTO. As such, the showing of record is that PTO/SB/47 cannot be used.

The U.S. Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions.²³ Specifically petitioners' delay caused by the mistakes or negligence of their voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. § 41(c)(1) or 37 CFR 1.378(b).²⁴ Petitioners were not forced, but rather made a conscious decision to obtain the services of the chosen representative in payment of the maintenance fees for this patent, and therefore must be held accountable for his actions, or lack thereof, before the Office.

²¹ See Patent No. 4,409,763, *supra*; see also "Final Rules for Patent Maintenance Fees" 49 Fed. Reg. 34716, 34722-34723 (August 31, 1984), reprinted in 1046 Off. Gaz. Pat. Office 28, 34 (September 25, 1984).

²² Rydeen v. Quigg, 748 F. supp. at 900.

²³ Link v. Wabash, 370 U.S. 626, 633-34 (1962).

²⁴ Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (Comm'r Pat. 1891).

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable. The \$400.00 petition fee for seeking reconsideration is not refundable. Any request for refund should be in writing to the address noted below.

ALTERNATIVE VENUE

Petitioner may wish, in the alternative, to request reconsideration in the form of a petition under 37 CFR 1.378(c), requesting that the unintentionally delayed payment of a maintenance fee be accepted. A petition to accept the delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be filed within twenty four months from the end of the six month grace period (e.g., the expiration date of the patent and be accompanied by (1) a verified statement that the delay was unintentional, (2) payment of the appropriate maintenance fee, unless previously submitted, (3) payment of the \$1,640.00 surcharge (the \$700.00 surcharge already paid may be credited thereto leaving a balance due of \$940.00) set forth in 37 CFR 1.20(i)(2). The statement can be verified by using the attached petition form which includes a declaration according to 37 CFR 1.68.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the patent was expired until the filing of the petition to reinstate under 37 CFR 1.378(c), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.378(c).

The address in the petition is different from the correspondence address. A courtesy copy of this decision is being mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record. A change of correspondence address should be filed if the correspondence address needs to be updated.

Petitioner should note that if this petition is not renewed, or if renewed and not granted, then the maintenance fee and post-expiration surcharge are refundable.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at 571-272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: PTO/SB/66

**PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378 (c))**

Docket Number (Optional)

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent No. _____

Application Number _____

Issue Date _____

Filing Date _____

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable

The above – identified patent

☐

Is a reissue of original Patent No. _____ original issue date _____

original application number _____

original filing date _____

☐

resulted from the entry into the U.S. under 35 U.S.C. 371 of international application _____

filed on _____

CERTIFICATE OF MAILING (37 CFR 1.89(a))

I hereby certify that this paper (*along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class main in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Date_____
Signature_____
Typed or Printed Name of Person Signing Certificate

[page 1 of 3]

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

1. SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

| NOT Small Entity | | | Small Entity | | |
|-----------------------------------|-------------|--------|-----------------------------------|-------------|--------|
| Amount | Fee | (Code) | Amount | Fee | (Code) |
| <input type="checkbox"/> \$ _____ | 3 ½ yr fee | (1551) | <input type="checkbox"/> \$ _____ | 3 ½ yr fee | (2551) |
| <input type="checkbox"/> \$ _____ | 7 ½ yr fee | (1552) | <input type="checkbox"/> \$ _____ | 7 ½ yr fee | (2552) |
| <input type="checkbox"/> \$ _____ | 11 ½ yr fee | (1553) | <input type="checkbox"/> \$ _____ | 11 ½ yr fee | (2553) |

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) of \$ _____ (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of a maintenance fee.

SURCHARGE FEE BEING SUBMITTED \$ _____

5. MANNER OF PAYMENT

☐ Enclosed is a check for the sum of \$ _____

☐ Please charge Deposit Account No. _____ the sum of \$ _____

☐ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. _____

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

7. OVERPAYMENT

As to any overpayment made please

OR

☐

Credit to Deposit Account No. _____

☐

Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. STATEMENT

The delay in payment of the maintenance fee to this patent was unintentional.

9. PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

Signature(s) of Petitioner(s)

Date

Typed or printed name(s)

Registration Number, if applicable

Telephone Number

Address

Address

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

ENCLOSURES☐

Maintenance Fee Payment

☐

Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

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Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.